FILED
APR 30 1925
WM. R. STANSBURY
CLERK

No. 376 55

Supreme Court of the United States

OLD DOMINION LAND COMPANY,
PLAINTIFF IN ERROR,

v.

THE UNITED STATES OF AMERICA,
DEFENDANT IN ERROR.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

R. G. BICKFORD,
J. WINSTON READ,
THOMAS H. WILLCOX,
Attorneys for Plaintiff in Error.

Appeals Press, Inc., Richmond, Va.

17

Supreme Court of the United States

OLD DOMINION LAND COMPANY,
PLAINTIFF IN ERROR,

v.

THE UNITED STATES OF AMERICA,
DEFENDANT IN ERROR.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

An effort is made throughout the brief of opposing counsel to show that the course pursued by the Land Company indicates that it was seeking to get control of the improvements erected by the Government on the land covered by the leases.

There is nothing in the record to justify such a conclusion. The form of the leases was dictated by the Government, the character of structures to be erected on the land was determined by the Government, as was the period for the removal of the same.

The defendant was under no obligation to renew the leases. It is common knowledge that the war ended *de*

facto, and the Proclamation of the President ended it *de jure* almost a year before the institution of these proceedings.

It does not appear in the proceedings that the Government asked the plaintiff in error for an extension of time for the removal of buildings. The Government cannot now urge that the period which it stipulated for in the leases was insufficient for the removal of the buildings without showing that it had requested an additional period. The period for the removal of the buildings was the period fixed in the lease by the Government's requirement. Nor is it shown anywhere in the record that the removal of the buildings could not easily have been made within the reserved period. The bill of exceptions (page 62 of the record) shows that prior to the Act of March 8, 1922, accredited officers of the War Department, acting therefor, and for the Secretary of War, stated that the property sought to be taken in these proceedings was no longer needed for the public use. That being so, if the Government had desired to remove the buildings, it certainly had from a period prior to March 8, 1922, sufficient opportunity to have removed them if it so desired.

Counsel for the Government complain, page 3, of their brief, that the Board of Directors of the Old Dominion Land Company convened in New York on July 28, 1922, only one day prior to the expiration of the 30-day period allowed for removal, and refused the Government's offer to purchase. Counsel does not emphasize the fact that the Government allowed 19 days of the 30-day period to elapse before the Government made any offer to purchase the property. Certainly the Board of Directors of the Land Company rejected the offer of the Government with business promptness. Moreover, the action of the Board in refusing the Government's offer to purchase was forecasted in the 5th paragraph of President Livezey's letter of July 24, 1922 (Rec. p. 39).

The fact that the Land Company was willing to make these leases for admittedly nominal rentals (opp. brief, p. 19), does not show a grasping disposition, but rather an effort to aid in the prosecution of the War. The structures had not then been erected, and no one connected with the Land Company could possibly foresee that the Government would not avail itself of the right given in the leases to remove the buildings.

Neither the Acts of March 8, 1922, *nor July* 1, 1922, *authorize the taking of plaintiff in error's property in this condemnation proceeding.*

In addition to the argument set out on pages 38 to 49, inclusive, of the original brief, it is further respectfully submitted that the only justification for the exclusion by Congress of certain elements of damage which would have to be considered and allowed in other condemnation proceedings, is the fact that all of the property sought to be condemned was in one or the other of the classes contemplated by the Act of March 8, 1922. Assuming that we are correct in this, then the elements which are set forth as a condition to condemnation are essential parts of the Act and not surplusage as held by the District Court; for if they are surplusage there is no justification for the exclusion of any element from the recovery that might properly be excluded in other cases.

The Act of July 1, 1922, was only intended for the completion of the acquisition of real estate as authorized under the Act of March 8, 1922, so as to release appropriations necessary for the completion of the acquisition of real estate in certain cases. Under this act it is stated—"For Quartermaster Warehouses—Newport News, Virginia." The efficacy of the phrase "For Military Purposes" is qualified by the reference "As authorized by an

Act approved March 8, 1922." The act of March 8, 1922, is therefore to be read into this act. No declaration in this act of a purpose inconsistent with that act is within the appropriation of the act of July 1, 1922. If, therefore, we have been able heretofore to show that the Act of March 8, 1922, was dependent for its existence upon the pre-requisites therein described, and if we have been able to show that the rights and limits of compensation in condemnation are dependent upon the existence of these pre-requisites, it follows that all these apply with equal authority to the Act of July 1, 1922, since this latter act merely appropriates money for the procurement of land "as authorized by the Act approved March 8, 1922."

It follows that the caption "For Military Purposes" and the descriptoin "For Quartermaster Warehouses" means in the appropriation act only what that language would have meant had it been inserted in the prior act with the qualification as to pre-requisites as declared in the act, and with the definition of the character of use required implied from the confining of the operation of the act to these pre-requisites, rather than to military use in any public sense, but only a military use in the respect that the warehouses at the time of the condemnation belonged to the military establishment of the United States and that it was necessary to get the lands for the use of the military structures which themselves were no longer useful to the military establishment and had been so certified by that establishment. However necessary the military structures might have been in the first instance, the land for these structures was no longer required for any public purpose, since the structures themselves were not required therefor.

DEBATES IN CONGRESS

Counsel for the United States have cited numerous cases on pages 19 to 22, inclusive, of their brief in support of the

proposition that debates in Congress are not admissible to determine the intent and meaning of a statute which is plain on its face.

These cases are not in point. The position taken by counsel for the Land Company is that reports of the House and Senate Committees as well as explanatory statements of the Committee member in charge of the bill made in the course of passage are admissible to show the legislative intent. This contention is clearly sustained by the cases cited on page 45 of the original brief.

There is no better way of discovering the true meaning of a statute when expressions are rendered ambiguous by their connection with other clauses, than by considering the necessity for it and the causes which induced its enactment. And if a literal interpretation of every part of a statute would be contrary to the evident meaning of the act taken as a whole, it should be rejected.

United States v. *Baltimore Post Co.*, 2 F. (2d) 761; *Hawaii* v. *Mankichi*, 190 U. S. 212, 47 L. ed. 1016.

PUBLIC USE AND PUBLIC BENEFIT

It is submitted that the cases cited on pages 50 to 56, inclusive, of the original brief of the Land Company, show that the Circuit Court of Appeals was in error in holding that "public use" and "public benefit" are synonymous terms. In addition to the cases cited in the opinion of that Court, the following are relied on in the brief of counsel for the Government.

Shoemaker v. *United States*, 147 U. S. 282.

This was a proceeding to condemn lands for a public park in the District of Columbia.

Sears v. *City of Akron*, 246 U. S. 242.

This was in injunction suit to restrain the construction of a dam and reservoir, and the use of certain water for a public water supply for the City of Akron, Ohio.

Rindge Co. v. *County of Los Angeles*, 262 U. S. 700.

The object of the proceeding in this case was to condemn certain lands for use as a public highway by the County of Los Angeles, California.

United States v. *Gettysburg Electric Rwy.*, 160 U. S. 668.

The question determined in this case was that the United States had the power to condemn the land whereon the Battle of Gettysburg was fought, properly preserve and mark the various sites upon which this struggle took place, erect monuments thereon provided by Acts of Congress, and maintain same at public expense. The Court held that the right to condemn this land was essentially the same as the right to take land for cemeteries for the burial of deceased soldiers of the country.

In each of the foregoing cases it is perfectly apparent that the use to which the land was devoted was a public use. They wholly fail to sustain the contention of defendant in error.

United States v. *Forbes*, 259 Fed. 585.

It is true that in this case the District Court held that where condemnation proceedings had been instituted by the Government and expensive improvements erected on the land, it was not for a defendant or a judge or court to de-

termine as to whether the property would be used by the Secretary of War permanently, temporarily, or for the purpose for which the condemnation proceedings were brought.

This case is not an authority for the defendant in error for the following reasons:

1. The condemnation proceedings were begun and the petition granted in war time.

2. At the time the condemnation proceedings were begun the lands were needed by the United States as a site for a military training camp. The Act of Congress, July 2, 1919 (Comp. Stat. 1918, Sec. 6911a) specifically authorized the taking.

3. The status of the case and the rights of the parties were fixed at the time the petition for condemnation was granted. Manifestly at that time the property was taken for the public use and the mere fact that the Government did not provide funds for the taking of the property until afterwards was immaterial.

VALUE OF IMPROVEMENTS

The contract of lease expressly fixed the time of removal of the buildings. At the expiration of such period all right of the United States in the same ceased. The Government did not enter upon these lands with any intention of condemning or purchasing the same—the terms of the lease expressly exclude any such idea. The Government only agreed and intended to pay a specified rental for the land and at the expiration of the lease, remove the buildings.

None of the cases cited by counsel for the Government seem to be in point.

U. S. v. *New River Collieries*, 262 U. S. 341, 67 L. ed. 1014.

This was a proceeding to recover compensation for coal taken by the Government for war purposes. The question before the Court was whether the trial court erred in refusing to allow the United States to introduce evidence of the "real" value of the coal as distinguished from its market value. This Court held that the market value represented what was just compensation. It is not perceived that this case has any bearing on the point under discussion.

Consolidated Turnpike v. *Norfolk & O. V. R. Co.*, 228 U. S. 596, 57 L. ed. 982.

In this case it was held that where a corporation clothed with the power of eminent domain lawfully enters into possession of land for the purpose of building thereon railway tracks and other improvements with the intent to institute condemnation proceedings, it is not proper in ascertaining just compensation to take into consideration the value of such tracks and improvements.

U. S. v. *Chandler-Dunbar Co.*, 229 U. S. 53, 57 L. ed. 1063.

This was a condemnation proceeding instituted by the United States in the interest of navigation. By Act of March 3, 1909, Congress determined that the entire St. Mary's River between the American bank and the International line was necessary for the purpose of navigation of said waters, and consequently that riparian owners had

no right of private property, for which compensation would have to be made by the United States in the condemnation proceeding. In other words that the Government could not be required to pay for an element of value which did not exist.

Pearson v. *United States*, U. S. Sup. Ct. Adv. Op. 1924-1925, p. 275 (Decided March 2, 1925).

This was a proceeding instituted under the Tucker Act to recover the value of buildings and improvements erected by the War Department on leased premises and removed after the expiration of the lease. The United States demurred on the ground that the petition did not state a cause of action within the jurisdiction of the Court. The demurrer was sustained and the petition dismissed.

The allegations of the petition, briefly stated, were as follows:

> On September 11, 1917, the claimants leased to the chamber of commerce of Jacksonville, Florida, a tract of land, to be used solely for Federal camp purposes, for the maximum term of three years. The lease provided that all buildings and improvements placed upon the land during said term by the lessee, its successors or assigns, should remain "the exclusive property of the lessee, its successors or assigns," and might be removed within the period of three months after the expiration of the lease. Shortly after the execution of the lease the chamber of commerce agreed "verbally" with the War Department that the land might be used and occupied as a portion of a training camp for United States

troops; and the claimants acquiesced in and consented to its use and occupancy by the United States under and subject to the terms, conditions, and provisions of the lease. The land was thereafter included in Camp Joseph E. Johnston. Certain improvements were erected by the United States on the land which were removed after the period stipulated in the lease.

The Court held that the petition did not allege any contract by the United States, express or implied, to pay the claimant the value of the buildings and improvements removed by it. Accordingly the Tucker Act afforded no remedy, the claimants' cause of action being one sounding *in tort.*

Mr. Justice Sanford speaking for the Court said in part:

> "It does not appear from the petition that the United States stood in any contractual relation with the claimants, as an assignee of the lease, or otherwise. On the contrary, it appears that it merely used the land under the oral permission of the chamber of commerce. And while the claimants allege, in general terms, that they acquiesced in and consented to such use and occupancy subject to the terms of the lease, it is not known that the War Department either knew this fact or had any knowledge of the terms of the lease. Therefore, whatever may be the construction and effect of the lease as to the right of removing the buildings and improvements, or the implied obligation of the lessee or its assigns in regard thereto, the petition

> fails to show that, as between the claimants and the United States, there existed any relationship of landlord and tenant under the lease from which an agreement to pay for the property can be implied."

The question decided in the above case was not that the petitioners did not have a right, but that they had not adopted the proper procedure. In the case at bar the buildings are still on the property while in the cited case they had been removed therefrom.

To all intents and purposes the United States became a trespasser and was so treated by the Land Company after the expiration of the period allowed for the removal of the buildings, (Rec. pp. 10, 11, 12, 13).

> 35 C. J. 1029;
> *Black* v. *LaPorte*, 271 Fed. 620, 623.

And if a trespasser, the value of the improvements should have been allowed the Land Company in this proceeding.

> *Nor. & O. V. Rwy. Co.* v. *Consolidated Turnpike*, 111 Va. 131, 141.

It is submitted that the judgment of the Circuit Court of Appeals, affirming the judgment of the District Court should be reversed.

Respectfully submitted,

R. G. BICKFORD,
J. WINSTON READ,
THOMAS H. WILLCOX,
Attorneys for Plaintiff in Error.